

August 29, 2003

4100 STUDENT SAFETY

4100 Statutory Authority

The Vermont Statutes Annotated addresses the areas of school attendance, truancy, discipline, punishment, health, safety, and transportation. Refer to the statutes for specific laws.

The subject of “student records” is addressed elsewhere in this manual. [Editor’s Note: See Rule 2120.8.3.3]

- 4101 Every school district receiving federal and/or state funds for program support will develop a program of safety, institute that safety program, and monitor it to make sure it is kept current.

- 4102 Superintendents and school boards shall develop a comprehensive emergency plan for each school that will be updated and tested annually and a functional emergency organization.

The plan shall include provision of such disasters as fire, smoke, tornado, nuclear disaster, snow, blizzard, ice, flood, earthquake, bomb threat, civil disturbance, bus accidents and other emergencies.

4200 Alcohol and Drugs

- 4210 Statutory Authority: 16 VSA §1165

- 4211 Definition

Alcohol and drug abuse (substance abuse) shall be defined as: “the ingestion of a substance in such a way that it interferes with a person’s ability to perform physically, intellectually, emotionally or socially.”
Vermont Office of Alcohol and Drug Abuse Programs.

- 4212 Policy Requirements

School districts shall adopt an alcohol and drug abuse policy which shall contain the following:

4212.1 Statement of Philosophy.

This policy shall be concerned with the health and well being of all students and the policy shall take into consideration the individual needs of students with problems as well as the right of the majority of students to an education.

4212.2 Education Program.

The policy shall define an educational program consistent with the Vermont Alcohol and Drug Education Curriculum Plan

4212.3 Support and Referral Systems and Cooperative Agreements.

The policy shall provide for a support and referral system for students in distress due to their own or another's use of alcohol or other drugs. Such a system shall include both a clearly defined in-school process for initial assessment, support, and if necessary, referral to community resources of such students, and a written referral agreement with at least one community substance abuse treatment provider approved by the Office of Alcohol and Drug Abuse Programs. Such an agreement should define the process for making an effective referral and the nature and extent of information to be provided during and after such a referral to all parties involved.

4212.3A Immediate Procedures

The policy shall provide for the handling of any alcohol/drug related incident until the student has been discharged to the parent, guardian, social service, medical or law enforcement agency.

4212.3B Emergency

The school district policy shall establish procedures for administering emergency first aid related to alcohol and drug abuse. The procedures will define the roles of the personnel involved.

4212.3C Possession, distribution, etc.

The school shall have a procedure that requires the administration to be immediately informed by a school staff member of any violation of the law, including illegal possession or distribution of drugs or alcohol. The administration shall follow the appropriate legal procedures and due process of law for discipline.

4212.3D Performance and Behavior Related Problems

School district policy shall designate staff available for consultation with a student whose behavior or performance may indicate a problem with alcohol or drug abuse. This staff will determine the need for further screening, education, counseling, or referral for treatment.

4213 Procedures for education

4213.1 Schools shall develop a sequential K-12 alcohol and drug abuse prevention education curriculum as defined in Vermont State Alcohol and Drug Education Curriculum Plan and in Health Education and Traffic Safety and Driver Education requirements of the Standards for Approving Vermont's Public Schools.

4213.2 Schools shall provide for training of school staff such that teachers and health and guidance personnel have a sufficient level of professional development to enable them to competently teach or provide other services required in the school's alcohol and drug abuse prevention education program. A minimum training program should be directed toward the following areas:

- Pharmacology
- Chemical Use, Abuse, and Dependence
- Chemical Dependence and the Family
- Societal and Personal Attitudes
- Policy and Legal Issues
- Support and referral Systems for Students in Distress
- Curriculum Development, Methods, and Classroom Issues
- School Climate
- Drinking and Driving

In addition there shall be an orientation for the entire school community on the program, its intent, and alcohol and drug issues in general.

4214 Community Involvement

Schools shall provide for a program to inform the community about the school's alcohol and drug prevention education program, alcohol and drug abuse prevention issues, and community-wide responsibility for effective alcohol and drug abuse prevention.

4215 Annual Report

Schools shall submit an annual report, due to the Commissioner of Education by July 1 of each year, which includes a description of the school's alcohol and drug abuse prevention program, the apparent effectiveness of the program, an evaluation of the curriculum, and an assessment of the problems of alcohol and drug abuse within the school district. This report shall use the standard format provided by the Department of Education.

4220 Prescription Drugs

4221 Statement of Purpose

Many children are able to attend regular school because of the effective use of medication in the treatment of chronic disabilities or illnesses. When possible medication shall be administered in the home. However, any student who is required to take medication during the regular school days must comply with the school regulations, which shall require the following.

4222 Procedures

The school shall assure that the following are provided:

4222.1 Written orders from a physician detailing the name of the drug, dosage, time interval the medication is to be taken, diagnosis, and reason for giving.

4222.2 Written permission from the parent or guardian requesting that the school district comply with the physician's order.

4222.3 Medication brought to school in a container appropriately labeled by the pharmacy or physician.

4222.4 A locked cabinet for storage of medications.

4222.5 Opportunities for communication with the pupil, parent, and physician regarding the efficacy of the medication administered during school hours.

4300 Disciplinary Action

4310 Statutory Authority 16 VSA §1162

4311 Procedures

When a student is subject to disciplinary action, the school district shall afford the student due process procedures as follows:

4311.1 In all cases of short-term suspension from school, which is generally regarded as 10 days or less, the student and his or her parent/guardian shall be given an opportunity for an informal hearing before an appropriately designated school official. Except for cases set forth in paragraph 4311.3, the hearing must precede the suspension and the district shall provide:

- (1) notice of the charges;

- (2) explanation of the evidence against the student;
- (3) opportunity for the student to tell his or her side of the story; and
- (4) decision in writing to the parent/guardian.

4311.2 In cases of a long term suspension which is generally more than 10 days unless a school district establishes a shorter period, or an expulsion, the student and his or her parent/guardian shall be given an opportunity for a formal hearing before the school board and the district shall provide:

- (1) written notice of the following:
 - (a) nature of charges against the student;
 - (b) date, time and place of hearing;
 - (c) right to legal representation;
 - (d) possible penalties involved;
- (2) opportunity to present evidence;
- (3) opportunity to cross-examine witnesses; and
- (4) decision in writing to parent/guardian

4311.3 (1) When a student, because of his or her conduct or condition, is an immediate threat to himself or herself, others, property or educational environment, the school district may take whatever action is appropriate under the circumstances, including, but not limited to, immediate suspension pending a hearing as soon as possible thereafter. In addition, in cases where a student brings a weapon (as defined in the federal Gun-Free School Act) to school, the school district must refer the student to a law enforcement agency and expel the student for a period of not less than one calendar year unless such expulsion is modified in accordance with the provision of 16 VSA §1166(b)(2) in circumstances such as but not limited to:

- (a) the student is unaware that he or she has brought a weapon to school,

- (b) the student did not intend to use the weapon to threaten or endanger others,
- (c) the student is disabled and the misconduct is related to the disability,
- (d) the student does not present an ongoing threat to others and a lengthy expulsion would not serve the best interest of the student.

- (2) In situations where a student with a disability brings a weapon to school, the provisions of regulation 4312(2) shall apply. In any such situation, an opportunity for a hearing prior to an expulsion must be provided prior to the expulsion, pursuant to 16 VSA §1166(b)(2)

4312 Discipline Procedures for Students Who are Not Eligible for Special Education Services, but Who Are or May Be Qualified Individuals with Disabilities under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794; 34 CFR §104 et seq.)

In addition to the general disciplinary procedures found within Rule 4311, and in accordance with 34 CFR §104.36, the following procedures apply to children who are qualified individuals with disabilities as defined by Section 504 of the Rehabilitation Act of 1973 (hereinafter Section 504).

- (1) A Section 504 student shall not be removed from his or her current educational placement for disciplinary reasons for more than 10 consecutive school days in a school year unless the following procedures have been completed:
 - (a) A re-evaluation, as defined by 34 CFR §104.35; and
 - (b) A determination by the student's Section 504 team that the conduct is not a manifestation of his or her disability.
- (2) A Section 504 student shall not be removed from his or her current educational placement for disciplinary reasons for more than 10 cumulative days in a school year when the removals constitute a change in placement as defined in Rule 2360.2(d)(1) unless the following procedures have been completed:
 - (a) A re-evaluation as defined by 34 CFR §104.35; and
 - (b) A determination by the student's Section 504 team that the conduct is not a manifestation of his or her disability.

- (3) When it is determined by a student's 504 team that the conduct is not a manifestation of the student's qualifying disability, the student may be disciplined in the same manner, and subject to the same disciplinary consequences, as a non-disabled child, including suspension or expulsion without the provision of services.
- (4) When it is determined by a student's Section 504 team that the conduct is a manifestation of his or her qualifying disability, a change in program or placement may be implemented by the student's Section 504 team and the student's section 504 team may respond to the conduct by designing, amending and/or enforcing a plan of behavior management.
- (5) If, at the time of the occurrence of conduct that gives rise to consideration of removal of a student from his or her current educational placement for more than 10 consecutive school days in a school year, the student is believed to be a qualified individual with a disability under Section 504, a Section 504 evaluation shall be completed prior to imposition of the removal.
 - (a) If the evaluation results in a determination that the student is a qualified individual with a disability under Section 504, the discipline procedures in this rule shall be followed.
 - (b) If the evaluation results in a determination that the student is not a qualified individual with a disability under Section 504, the discipline procedures in Rule 4311 shall be followed.
- (6) If, at the time of the occurrence of conduct that gives rise to consideration of removal of a student who is believed to be a qualified individual with a disability under Section 504 for more than 10 cumulative school days in a school year, and the removals constitute a change in placement as defined in Rule 2360.2(d)(1), a Section 504 evaluation shall be completed prior to imposition of the removal.
 - (a) If the evaluation results in a determination that the student is a qualified individual with a disability under Section 504, the discipline procedures in this rule shall be followed.
 - (b) If the evaluation results in a determination that the student is not a qualified individual with a disability under Section 504, the discipline procedures in Rule 4311 shall be followed.

- (7) If a child who is a qualified individual under Section 504 possesses or carries a weapon, as defined in Rule 4313.9(a), to school or at a school function, he or she may be placed in an interim alternative educational setting (IAES) in accordance with the procedures set forth in Rule 4313.9 and Rule 1253. The student's 504 team shall determine the IAES, and the services provided in the IAES, in accordance with the procedures set forth in Rule 4313.9. It is the intent of this section to discipline a child who is a qualified individual under Section 504 in the same manner as students who are eligible for special education when they possess weapons at school or at school functions.
- (8) When a parent disagrees with disciplinary action taken by a school district, the parent may request an impartial due process hearing, and the procedures in Rules 2365.1.6(c) through 2365.1.9 shall apply. In addition to or in lieu of a due process hearing a parent may file a complaint with the U.S. Department of Education Office for Civil Rights.
- (9) A hearing officer may order a change in the placement of a child who is a qualified individual under Section 504 to an appropriate IAES for not more than 45 calendar days if the hearing officer, in an expedited due process hearing:
 - (a) Determines that the school district has demonstrated by substantial evidence which, for purposes of this section, shall mean a preponderance of the evidence, that maintaining the current placement of the child is substantially likely to result in injury to the child or others.
 - (b) Considers the appropriateness of the child's current placement;
 - (c) Considers whether the school district has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
 - (d) Determines that the IAES that is proposed by school personnel will enable the child to continue to progress in the general curriculum. The services provided to and modifications made for the child in the IAES shall be designed to address and prevent the child's offending behavior.

(10) This Rule (4312) shall not apply when a responsible agency takes disciplinary action against a Section 504 student if:

- (a) The misconduct for which the student is being disciplined pertains to the use or possession of illegal drugs or alcohol at school or at a school function; and
- (b) The student is currently engaging in the use of alcohol or illegal drugs.

In this instance, the Section 504 student shall be disciplined in accordance with Rule 4311.

4313 Discipline Procedures for Students Eligible for Special Education Services

In addition to the general disciplinary procedures found within Rule 4300, the following procedures apply to children eligible for special education services:

4313.1 Authority of School Personnel to Order Short-term Removals

Except as set forth in Rules 4313.5(a), 4313.8 and 4313.9, or as otherwise provided by law:

- (a) To the extent a removal would be applied to a child who was not eligible for special education services, an eligible child may be removed from the educational setting by the school principal with the agreement of the special education administrator (who can be the case manager) for not more than ten consecutive school days for any violation of school rules.
- (b) During the same school year, additional removals of not more than ten consecutive school days each may be ordered for separate incidents of misconduct, so long as those removals do not constitute a change of placement, as defined in Rule 4313.2.

4313.2 Change of Placement

For purposes of Rules 4313.1 to 4313.13:

- (a) A “change of placement” occurs if a child’s removal from his or her current educational placement for disciplinary reasons is for more than ten consecutive school days.

- (b) A “change of placement” occurs if the child is subjected to a series of removals that:
 - (1) Add up to more than ten school days in a school year, and
 - (2) Constitute a pattern based upon such factors as:
 - (i) The length of each removal, the total amount of time the child is removed;
 - (ii) The proximity of the removals to one another; and
 - (iii) The reasons for the removals.
 - (3) The determination as to whether a change of placement has occurred shall be made by the school principal with the agreement of the school district’s/supervisory union’s Director of Special Education. Where no such agreement is reached, a change of placement shall be deemed to have occurred.

4313.3 Functional Behavioral Assessments and Behavioral Intervention Plans

- (a) Not later than ten business days after first removing the child for more than ten school days in a school year or commencing a removal that constitutes a change of placement, an IEP meeting shall be convened to develop an assessment plan. An assessment plan need not be developed if, prior to the behavior that resulted in the removal, the school district had conducted a functional behavioral assessment and implemented a behavioral intervention plan. If the child already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation, and modify the plan and its implementation, as necessary, to address the behavior.
- (b) As soon as is practical after developing the assessment plan, and completing any assessments required by the plan, the school district shall convene an IEP meeting to develop and implement appropriate behavioral interventions to address that behavior.

- (c) If, subsequently, an eligible child who has a behavioral intervention plan and who has been removed from his or her current educational placement for more than ten school days in a school year is subjected to a removal that does not constitute a change of placement, the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary. If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

4313.4 Manifestation Determination Review

- (a) If a change of placement or placement in an interim alternative educational setting (IAES) is contemplated, the child's parents shall be notified of that decision on the day it is made and shall be provided with a procedural safeguard notice, as described in Rule 2365.1.2. As soon as possible, but no later than ten school days after the decision is made, a review must be conducted of the relationship between the child's disability and the behavior that is the subject of the disciplinary action. This review shall be conducted at a meeting of the student's IEP team and other qualified personnel.
- (b) In conducting a manifestation determination review, the IEP team shall consider all relevant information, such as evaluation and diagnostic results, including:
 - (1) the results or other relevant information supplied by the parents of the child;
 - (2) observations of the child; and
 - (3) the child's IEP and placement.
- (c) The child's behavior shall be considered to be a manifestation of his disability unless it is determined that:
 - (1) In relationship to the child's behavior that is the subject of the disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavioral intervention strategies were

provided consistent with the child's IEP and placement;

- (2) The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior that is the subject of the disciplinary action; and
- (3) The child's disability did not impair the child's ability to control that behavior.
- (d) If, during the manifestation determination review, it is determined that there are deficiencies in the child's IEP or placement, immediate steps must be taken to remedy those deficiencies.
- (e) The manifestation determination review may occur at the same IEP meeting where the functional behavioral assessment or the behavioral intervention plan is considered.

4313.5 Determination that Behavior Was Not A Manifestation of Disability

If it is determined that the child's behavior was not a manifestation of his or her disability:

- (a) The child may be disciplined in the same manner as would children without disabilities.
- (b) The special education and disciplinary records of the child shall be transmitted to the person or persons making the final determination regarding the disciplinary action.
- (c) The IEP team shall determine and the school district provide educational services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP.

4313.6 Determination that Behavior Was a Manifestation of Disability

If it is determined that the child's behavior was a manifestation of his or her disability, the school district must:

- (a) Remedy any deficiencies found in the child's IEP or placement or their implementation;
- (a) Consider the appropriateness of continued placement in the IAES, if that is where the child was placed pending the results of the manifestation determination review described in Rule 4313.4; and
- (b) Not implement a change in placement as a disciplinary action unless Section (b) above applies.

4313.7 Parent appeal of Non-manifestation Determination Decision

- (a) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of a disability, the parent may request a due process hearing, in which case an expedited hearing, conducted by an impartial hearing officer in accord with Rule 2365.1.7, shall be arranged to take up the matter.
- (b) In reviewing a manifestation determination, the burden of proof is on the school district to demonstrate that the child's behavior was not a manifestation of the child's disability.

4313.8 Authority of Hearing Officer to Order IAES Placement

A hearing officer may order a change in the placement of a child eligible for special education to an appropriate IAES for not more than 45 calendar days, if the hearing officer, in an expedited due process hearing:

- (a) Determines that the school district has demonstrated by substantial evidence, which for purposes of this section shall mean a preponderance of the evidence, that maintaining the current placement of the child is substantially likely to result in injury to the child or others;
- (b) Considers the appropriateness of the child's current placement;
- (c) Considers whether the school district has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

- (d) Determines that the IAES that is proposed by school personnel, who have consulted with the child's special education teacher, will enable the child to continue to progress in the general curriculum. While in the IAES, the child must receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP. The services provided to and modifications made for, the child in the IAES shall be designed to address and prevent the child's offending behavior.

4313.9 Removals for Weapons or Drugs

This rule applies to eligible children who:

- (1) possess or carry a weapon at school or a school function; or
- (2) knowingly possess or use drugs, not including alcohol or tobacco products, or sell or solicit the sale of a controlled substance while at school or a school function. In those situations, school personnel may make a change of placement by putting the child in an IAES for not more than 45 calendar days, if a child without a disability would be subject to discipline for the same amount of time. The IAES must be determined by the IEP team and be selected to enable the child to continue to progress in the general curriculum. While in the IAES, the child must receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP. The services provided to, and modifications made for, the child in the IAES shall be designed to address and prevent the child's offending behavior. For purposes of this rule,
 - (a) "Weapon" means a "dangerous weapon", as defined by 18 USC Section 930(g)(2), which is "a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 _ inches in length."
 - (b) "Controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in Section 202(c) of the Federal Controlled Substances Act (21 USC Section 812(c)).

- (c) “Illegal drug” means a controlled substance but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substance Act or under any other provision of Federal law.

4313.10 Parent Appeal of School District Placement Decision

- (a) If the child’s parent disagrees with a decision regarding a school district’s placement made under these disciplinary procedures, including removal to an IAES, the parent may request a due process hearing, in which case an expedited hearing shall be arranged to take up the matter.
- (b) In reviewing a decision of the school district to place the child in an IAES, the hearing officer shall apply the standards in Rule 4313.8 above.

4313.11 Placement During Discipline Appeals

- (a) If a parent requests a due process hearing to challenge an IAES placement or a manifestation determination, the child shall remain in the IAES pending the decision of the hearing officer or until the expiration of 45 calendar days from the time the placement was made, whichever occurs first, unless the parent and the school district agree otherwise.
- (b) If a child is placed in an IAES and the school district proposes to change the child’s placement after expiration of the IAES, during the pendency of any proceeding to challenge the proposed change in placement, the child shall remain in the placement immediately prior to the IAES except as provided in section (c) below.
- (c) If the school district determines that it is dangerous for the child to be in the placement immediately prior to the IAES, it may request an expedited due process hearing. At that hearing, the hearing officer shall apply the standards detailed in Rule 4313.8 above to determine whether the child should remain in the IAES for up to another 45 calendar days or be put in another appropriate placement. This procedure may be repeated as often as necessary for the safety of the child or others.

4313.12 Decisions Resulting From Expedited Due Process Hearings

Except as stated in this section, all procedures set forth in Rules 2365.1.6 – 2365.1.9 shall apply to expedited due process hearings brought pursuant to Rules 4313.7, 4313.8, 4313.10 and 4313.11. In all cases, written decisions from expedited due process hearings shall be mailed to the parties within 45 calendar days of the Department of Education's receipt of the request for the hearings. No exceptions or extensions shall be permitted. A decision in an expedited due process hearing is appealable to any Vermont court of competent jurisdiction or the United States District Court for the District of Vermont.

4313.13 Educational Services During Removals

After an eligible child has been removed for more than ten cumulative school days in the same school year, the school district shall provide that child with educational services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP. The child's IEP team shall determine the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the removals follow a determination under Rule 4313.4 that the conduct was not a manifestation of the child's disability. School personnel shall determine the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the removals are pursuant to Rule 4313.1.

4313.14 Protections for Children Not Yet Eligible for Special Education Services

- (a) A child who has not been determined to be eligible for special education services who has engaged in behavior that makes him or her subject to disciplinary action may assert any of the protections detailed in Rule 4313 if it can be shown that the school district had knowledge that the child was eligible for special education services before the behavior that precipitated the disciplinary action occurred.

- (b) For purposes of this section, a school district is deemed to have “had knowledge that the child was eligible for special education services before the behavior that precipitated the disciplinary action occurred” if:
 - (1) The child’s parent had expressed concern that the child was in need of special education services. The concern must be in writing unless the parent does not know how to write or has a disability that prevented a written statement;
 - (2) The behavior or performance of the child demonstrates the need for special education services pursuant to Rule 2362;
 - (3) The parent has requested a special education evaluation of the child; or
 - (4) The child’s teacher or other personnel of the school district has expressed concern about the child to the director of special education of the school district or to other personnel in accordance with the school district’s child-find or special education referral system.
- (c) A school district would not be deemed to have knowledge under the prior provision if, as a result of receiving information specified in that provision, it conducted an evaluation and determined that the child was not eligible for special education services, or it had been determined that an evaluation was not necessary and provided proper notice of the determination to the parents.
- (d) If the school district did not have prior knowledge that the child was eligible for special education services, the child may be disciplined in the same manner, as would children without disabilities. If a request for an evaluation is made during the time the child is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the child shall remain in the educational setting determined by school authorities, which can include suspension or expulsion without educational services. If the child is determined to be eligible for special education services, taking into consideration information from the evaluation conducted by the school district and information provided by the parent, services shall be provided in accordance with these Rules.

4313.15 Referral to and Action by Law Enforcement and Judicial
Authorities

Nothing in these Rules prohibits a school district from reporting a crime suspected of having been committed by a child eligible for special education services. Disclosure of special education records may be made to law enforcement and judicial authorities only as permitted by Rule 2365.2.12.

4312-4313.15 Approved 8/16/2001

4313.1(a) and 4313.2(b)(3) Approved 8/29/2003